

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Recommendations of the Independent)	
Panel Reviewing the Impact of Hurricane)	EB Docket No. 06-119
Katrina on Communications Networks)	

To: The Commission

**REPLY COMMENTS OF
CONSUMERS ENERGY COMPANY AND XCEL ENERGY SERVICES INC.**

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EXECUTIVE SUMMARY

Consumers Energy Company (“Consumers”) and Xcel Energy Services Inc. (“Xcel Energy”) support the work of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks. As discussed by the Panel, the internal communications networks operated by the electric and gas utility industry had a high rate of survivability following Hurricane Katrina. The safety of electric and gas operations is vital to the efforts of first responders and the restoration of all other critical infrastructures. Thus, utilities perform vital services during emergency recovery efforts, both internally and in coordination with public safety entities. While the Panel noted the resiliency and redundancy of utility communications networks as compared to public safety and commercial networks, the FCC must take action to address the spectrum needs of critical infrastructure industry entities. Utilities are in desperate need of dedicated, interoperable spectrum to support the mission-critical services that facilitate emergency preparedness and response.

Consumers and Xcel Energy recommend that the FCC expeditiously implement the recommendations of the Panel as described herein. The FCC can facilitate pre-planning efforts by working with industry sectors to publicize voluntary emergency readiness checklists and streamlining the waiver and special temporary authority approval process. The FCC should also work with other federal agencies to improve coordination during recovery operations, especially the designation of utilities as emergency responders.

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**JOINT REPLY COMMENTS OF
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Pursuant to 47 C.F.R. § 1.415, Consumers Energy Company (“Consumers”) and Xcel Energy Services Inc. (“Xcel Energy”) (collectively, the “Joint Commenters”), by and through their undersigned attorneys, hereby submit these joint reply comments in response to the *Notice of Proposed Rulemaking* (“NPRM”) in the above-captioned proceeding.¹

I. INTRODUCTION

Consumers is one of the nation's largest combination utilities, providing electric and natural gas service to more than 6 million of Michigan's 9.5 million residents, in all 68 counties of Michigan's Lower Peninsula. Consumers is the principal subsidiary of CMS Energy, an international corporation that is a leader in energy infrastructure businesses.

Xcel Energy, through its affiliated operating companies, generates, transmits, and distributes electricity and distributes natural gas to its customers. Xcel Energy offers a

¹ *Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks*, EB Docket No. 06-119, Notice of Proposed Rulemaking, FCC 06-83 (rel. June 19, 2006) (“*NPRM*”).

comprehensive portfolio of energy-related products and services to 3.3 million electricity customers and 1.8 million natural gas customers across 10 Western and Midwestern states. Xcel Energy operates more than 70 power plants that generate about 15,295 megawatts of electric power.

While the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks (“Independent Panel” or “Panel”) found that Hurricane Katrina had a devastating impact on all sectors of the telecommunications industry, it also highlighted the success of the internal communications system used by utilities to support their operations. In particular, the Panel stated:

Electric utility networks (including utility-owned commercial wireless networks) appeared to have a high rate of survivability following Katrina. These communications systems did not have a significant rate of failure because: (1) the systems were designed to remain intact to aid restoration of electric service following a significant storm event; (2) they were built with significant onsite back-up power supplies (batteries and generators); (3) last mile connections to tower sites and the backbone transport are typically owned by the utility and have redundant paths (both T1 and fixed microwave); and (4) the staff responsible for the communications network have a focus on continuing maintenance of network elements (for example, exercising standby generators on a routine basis).²

Commissioner Michael J. Copps specifically observed that “electric utility companies *have* developed networks that both survived the storm and managed to operate during the aftermath, even with the power outages.”³ Commissioner Copps noted that public safety and commercial networks should be built with the same concerns in mind.

While the Panel’s findings regarding the reliability of utility-owned and operated communications networks may be true from an infrastructure standpoint, it does not take into

² *Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks*, Report and Recommendations to the Federal Communications Commission at 12-13 (attached as App. B to *NPRM*) (rel. June 19, 2006) (“Report”).

³ Separate Statement of Commissioner Michael J. Copps at 2 (attached to *NPRM*).

account the difficulties utilities have in securing adequate spectrum for their communications systems. Despite the success of utilities' private networks, there is still a considerable need for the FCC to adequately address the spectrum needs of utilities. Unlike public safety entities or commercial carriers, utilities and other critical infrastructure industry ("CII") licensees have been forced to cobble together spectrum from various frequency bands, and are desperately in need of dedicated, interoperable spectrum.

II. RECOMMENDATIONS OF THE INDEPENDENT PANEL

The Panel's recommendations are organized into the following four areas: (1) pre-positioning the communications industry and the government for disasters; (2) improving recovery coordination; (3) improving the operability and interoperability of public safety and 911 communications; and (4) improving communication of emergency information to the public.⁴

A. Interoperability Needs of CII Entities

While the recommendations by the Panel will facilitate emergency preparedness and restoration efforts, they do not address the primary need of a vital component of the emergency response community – access by CII licensees to designated spectrum to permit interoperable, next-generation voice and data communications. The National Security Telecommunications Advisory Committee's ("NSTAC's") Industry Executive Subcommittee ("IES") convened a task force in the spring of 2005 to examine national security and emergency preparedness issues relating to the interdependencies between the telecommunications and electric power sectors.⁵ The Telecommunications and Electric Power Interdependency Task Force ("TEPITF") identified several long-term issues that need to be addressed, such as the extent to which "Federal policies

⁴ See *NPRM* at ¶ 6.

⁵ TEPITF, "People and Processes: Current State of Telecommunications and Electric Power Interdependences" at 3-5 (Jan. 31, 2006), *available at* <http://www.ncs.gov/nstac/reports/2006/TEPITF.pdf> ("TEPITF 2006 Report").

concerning spectrum allocation, including the lack of dedicated spectrum for internal utility systems, hamper[] the ability to restore electric power as quickly and safely as possible?”⁶

Although utilities’ internal communications and control networks are designed to withstand the effects of natural disasters, the ability of utilities to effectively communicate with each other and with public safety entities is severely limited by the lack of dedicated spectrum.⁷ Unlike public safety entities, utilities must operate systems using disparate frequency bands in competition with other users. Thus, out-of-area repair crews responding to a widespread emergency lack interoperable spectrum to communicate with the local utility or other emergency responders. During a natural disaster or other emergency, utilities perform vital mission-critical and emergency response functions that depend upon reliable communications systems. Thus, designated spectrum for CII entities would greatly improve emergency planning and communications restoration efforts. The Joint Commenters support API’s recommendation that at a minimum, the FCC not take any action in pending spectrum allocation or service rule proceedings that would cause harmful interference to CII licensees.⁸ The Joint Commenters also agree with NRECA that the FCC should expeditiously consider the proposal by UTC and Motorola to make available exclusively for CII entities 700 MHz guard band spectrum recently returned to the FCC by Sprint Nextel.⁹

⁶ TEPITF 2006 Report at 1-3.

⁷ See Comments of API at 6-8 (filed Aug. 7, 2006); Comments of NRECA at 6-7 (filed Aug. 7, 2006).

⁸ See Comments of API at 8-11.

⁹ See Comments of NRECA at 7; Letter from Jill M. Lyon, Vice President and General Counsel, UTC, and Steve Sharkey, Dir., Spectrum and Standards Strategy, Motorola to FCC Chairman Kevin J. Martin (July 20, 2006).

B. Pre-Positioning for Disasters

1. Voluntary “Readiness Checklists” For Utilities Should be Developed by Industry Consensus Groups

The Panel suggests that the FCC encourage each industry sector, through their various organizations and associations, to develop and publicize sector-specific readiness recommendations.¹⁰ As stated above, the Panel found that utilities’ private networks largely withstood the impact of Hurricane Katrina because utilities already implement numerous disaster preparedness measures, such as maintaining onsite back-up power supplies and routine upkeep of network elements.

The Joint Commenters are obligated to their employees and to the general public to conduct their operations in a safe manner and to maintain the reliability of their electric and gas utility services. They rely heavily on their private communications systems to support their utility operations and must maintain as reliable a communications network as possible in order to effectively manage their utility assets. Utilities’ private internal voice and data communications systems support mission-critical functions, such as supervisory control and data acquisition (“SCADA”) systems, transmission grids, and the distribution network. As such, the Joint Commenters have adopted stringent emergency planning measures to protect their critical infrastructure.

For example, Consumers has strategically stockpiled electronic parts and has placed spare coaxial transmission lines and antenna systems in warehouses to reduce the downtime to its internal communications network in the event of some unforeseen outage. Plans have also been established to reroute customer requests and dispatching functions to alternate locations if a natural disaster forces the closure of a major gas dispatch location. If a major storm or other

¹⁰ See Report at 31.

emergency damages the electric distribution network, Consumers has adopted detailed emergency restoration plans that include bringing in repair crews from other regions and providing them with pre-assembled communications packages consisting of pagers, cellular telephones, and conventional UHF two-way mobile radios to facilitate coordination.

As noted by the National Rural Electric Cooperative Association (“NRECA”), the utility industry has adopted electric reliability standards through the North American Electric Reliability Council (“NERC”).¹¹ NERC is a self-regulatory organization that develops and enforces reliability standards, monitors the North American bulk power system, and conducts training for industry personnel. The NERC reliability standards define the reliability requirements for planning and operating the North American bulk electric system. The NERC-approved standards include: (1) critical infrastructure protection measures such as sabotage reporting, incident reporting and response planning, and recovery plans for critical cyber assets; (2) emergency preparedness and operations, including system restoration plans, reliability coordination, and emergency operations planning; and (3) telecommunications reliability, including adequate telecommunications facilities for the exchange of operating information, testing and monitoring of vital telecommunications facilities, and maintaining personnel for addressing a real-time emergency condition. On July 20, 2006, the North American Electric Reliability Corporation, a wholly-owned subsidiary of NERC, was certified by the Federal Energy Regulatory Commission (“FERC”) as the single Electric Reliability Organization (“ERO”) for the United States with jurisdiction over utilities.¹²

¹¹ See Comments of NRECA at 3.

¹² *Order Certifying North American Electric Reliability Corporation as the Electric Reliability Organization and Ordering Compliance Filing*, Docket No. RR06-1-000, 116 FERC ¶ 61,062 (rel. July 20, 2006).

While the FCC should consult with FERC, NERC, and utility associations on developing best practices for cross-industry disaster planning and response efforts, the FCC should also recognize that the utility industry has already implemented extensive emergency planning measures. The success of the utility industry cited by the Panel is due to the fact that utilities have been able to develop preparedness standards through industry organizations that rely upon the collective expertise of the industry. This process has been extremely effective in protecting the internal communications networks operated by utilities.

2. Automatic Waivers and Special Temporary Authority for Affected Entities Would Facilitate Emergency Planning

The Joint Commenters support the Panel's proposal that the FCC establish a prioritized system of automatically waiving regulatory requirements and granting special temporary authority ("STA") to assist entities affected by natural disasters.¹³ While granting waivers and STAs once a disaster strikes will facilitate recovery efforts, it is crucial that utilities have the same flexibility to deploy their resources in advance of a disaster. Once utilities learn of an impending natural disaster, utility crews are quickly dispatched to the relevant area, often from other utilities outside the disaster area. Utilities rely upon their wireless voice networks for dispatching crews for emergency repair operations. Often, when utility crews are dispatched into other areas to assist during a major disaster, they are able to use their own internal radios to communicate with each other and with other utilities under STAs. During this critical period of time while utility crews are traveling to a particular site, it would be extremely beneficial for the repair workers to be able to get automatic STAs to use their radios to communicate with each other and workers already on the scene.

¹³ See Report at 32-33; *see also* Comments of DHS at 5 (filed Aug. 7, 2006); Joint Comments of IAFC/IMSA (filed Aug. 7, 2006); Comments of CTIA at 18; Comments of BellSouth at 10-11; Comments of Verizon at 15-17.

Accordingly, the Joint Commenters support the suggestion by NRECA that the FCC allow certified frequency coordinators, such as the United Telecom Council (“UTC”), to coordinate STAs in advance of a disaster, and not just in a formally declared disaster area.¹⁴ Certified frequency coordinators have vast industry expertise and coordination experience. The Joint Commenters agree with the Panel’s list of possible rule waivers for wireless services, including the waiver of application filing deadlines (*e.g.*, renewals, construction notifications, discontinuance notices, etc.), construction requirements, and discontinuance of service requirements.

C. Recovery Coordination

The FCC should coordinate with other federal and state agencies to eliminate barriers that prevent utilities from effectively coordinating with government agencies and other private entities during recovery operations.

1. Utility Personnel Should be Designated as Emergency Responders and Included in a National Credentialing Program

The Panel recommends that telecommunications infrastructure repair workers and their contracted workers be afforded emergency responder status under the Stafford Act.¹⁵ The Joint Commenters agree with this proposal and further recommend that the FCC work with the Department of Homeland Security (“DHS”), the Department of Energy (“DOE”), and Congress to ensure that this designation is extended to electric utility workers. The President’s National Security Telecommunications Advisory Committee’s (“NSTAC’s”) Telecommunications and Electric Power Interdependency Task Force (“TEPITF”) was charged with examining the national security and emergency preparedness issues relating to the interaction between the

¹⁴ See Comments of NRECA at 4.

¹⁵ See Report at 35.

telecommunications and electric power sectors. TEPITF concluded that “key personnel of critical infrastructure owners and operators in *both* sectors must be involved in planning for, and responding to, potential emergency events.”¹⁶ (emphasis added). Therefore, TEPITF recommended that “telecommunications and electric power professionals” be designated as emergency responders.¹⁷ The Joint Commenters fully support this recommendation.

The Stafford Act states that the federal government can provide non-monetary disaster relief to state and local governments, including priority access to restricted areas, logistical support such as staging areas and food for response personnel, security protection, and other essential resources such as fuel, water, and power.¹⁸ While the language of the Stafford Act does not appear to preclude the furnishing of such resources to private sector entities, uncertainty by federal agencies implementing the statute has prevented utility workers from being able to receive this support. If utility workers are designated as emergency responders, it would greatly facilitate their recovery efforts and improve coordination with the telecommunications sector.

In conjunction with designating utility workers as emergency responders, the Joint Commenters urge the FCC to work with other federal agencies develop a national standard for credentialing emergency responders.¹⁹ National guidelines applicable to all critical infrastructure repair workers, and accepted by all federal, state, and local law enforcement agencies, would

¹⁶ TEPITF 2006 Report at 3-5.

¹⁷ *Id.*

¹⁸ See Comments of USTelecom at 16; Comments of Verizon at 20; Comments of Sprint Nextel at 13.

¹⁹ See Report at 34.

allow utilities to send their repair workers across state jurisdictional boundaries to quickly begin recovery efforts in the affected areas.²⁰

In order for the FCC to effectively coordinate with other federal and state agencies, the FCC must make sure that its own internal agency structure is well suited to address the needs of all emergency responders, including utilities. More than five months after the FCC announced plans to establish a Public Safety and Homeland Security Bureau, specific details are still unclear.²¹ Given the interdependency between the telecommunications and utility sectors, and the important role of utilities in emergency response efforts, the FCC's apparent decision to exclude CII licensees from the new Bureau will hinder cross-coordination among emergency response personnel.²² The Joint Commenters urge the FCC to assign jurisdiction over CII licensees to the new Bureau. Alternatively, the FCC should establish policies to ensure strong coordination between the new Bureau and the Wireless Telecommunications Bureau on issues relating to the needs of utilities.

2. The FCC Should Adopt Regular Procedures for Licensees to Consult With FCC Staff During Future Emergencies

The FCC performed extremely well during the aftermath of Hurricane Katrina was in providing an open line of communication to licensees.²³ As the Panel noted, the FCC stayed open 24 hours a day, seven days a week to respond to entities affected by Katrina, established a

²⁰ See Comments of AT&T at 9; Comments of Sprint Nextel at 14; Comments of Verizon at 18.

²¹ See FCC Adopts Plan to Establish a Public Safety and Homeland Security Bureau; News Release, FCC 06-35 (rel. March 17, 2006).

²² See *FCC Votes to Launch Homeland Security Bureau, in Major Restructuring*, Communications Daily (March 20, 2006); *LMCC Members Say Concerns Remain as FCC Readies Public Safety Bureau*, Communications Daily (April 28, 2006).

²³ See Report at 20.

Task Force to coordinate the response efforts, and streamlined the procedures for obtaining necessary regulatory approvals.

In order to provide similar certainty during future emergencies, the Joint Commenters recommend that the FCC formalize these procedures in advance of future disasters. By developing prescribed guidelines for entities to consult with relevant FCC staff in advance of a disaster, the FCC will provide clear guidance and protocols instead of forcing licensees to rely upon last-minute ad hoc decisions. The FCC should conduct regular staff training on how the various Bureaus can assist licensees before and during an emergency to resolve any problems that may arise during communications recovery and restoration. The Joint Commenters agree with BellSouth that a website with FCC staff contact information and procedures for facilitating disaster response and outage recovery will be extremely beneficial to emergency recovery operations.²⁴

3. The FCC Should Coordinate with Other Agencies on Priority of Power Restoration

In response to the comments filed Verizon and Sprint Nextel regarding restoration of commercial power to telecommunications carriers, the Joint Commenters would simply point out that the FCC lacks jurisdiction and the expertise to mandate specific actions by utilities on the provision of electric power.²⁵ During the immediate aftermath of a natural disaster or other emergency, utilities face multiple competing demands for restoring power. As noted in TEPITF 2006 Report, utility priority restoration plans are developed in accordance with relevant state laws and public utility commission regulations.²⁶ In addition to commercial communications

²⁴ See Report at 37; Comments of BellSouth at 17, n. 36.

²⁵ See Comments of Sprint Nextel at 16; Comments of Verizon at 22.

²⁶ See TEPITF 2006 Report at 3-1.

networks, utility repair crews must also focus on restoring power to emergency and life support services and customers. Utility crews on the ground must have the flexibility regarding damage assessment and decisions on how to respond accordingly. The Joint Commenters recommend that the FCC refer carriers to the relevant state public utility commission for any guidance in prioritizing power restoration.

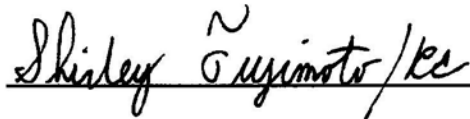
III. CONCLUSION

The Joint Commenters applaud the Panel for addressing issues vital to the telecommunications and utility sectors. As described herein, the Joint Commenters support the Panel's recommendations and urge the FCC to work with the appropriate federal and state agencies to implement these proposals.

WHEREFORE, THE PREMISES CONSIDERED, the Joint Commenters respectfully request the Commission to take action in this docket consistent with the views expressed herein.

Respectfully submitted,

**CONSUMERS ENERGY COMPANY and
XCEL ENERGY SERVICES INC.**

A handwritten signature in black ink, appearing to read "Shirley S. Fujimoto / kc", is written over a horizontal line.

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